

MATRIMONIAL FRAUDS & ACCESS TO JUSTICE

S.D.Dahiwal

*Advocate & Visiting Lecturer in Laws
Pune Bar Association
District & Sessions Court, & Family Court. Pune*

ABSTRACT

Matrimonial frauds under the Hindu marriages are growing day by day, comparatively from the old time or prior to the codification of Hindu Marriage Act, 1955, the fraud in Hindu marriage after the commencement of Hindu Marriage Act 1955 are becoming higher and higher,. It cannot be said that the law is responsible for that but it can be easily said that the changes in society and social circumstances are responsible for the Matrimonial Frauds, such as recurrent attacks of insanity, Schizophrenia, Pro-lapse of uterus, impotence, mental disorder, AID, HIV and other venereal diseases which amounts to matrimonial frauds between the parties.

This paper proposes the socio-psycho and legal aspects of matrimonial frauds, divorce and access to justice.

Keywords : Epilepsy, Schizophrenia, Venereal deceases, Psychosis, Hallucinations, divorce theories.

INTRODUCTION

Marriage institution is important as it is a medium of reproduction for continuity of human race. It fulfils the biological needs of human beings and makes them responsible for upbringing and rearing of their children. Marriage institution is also important in the context of giving a person a balanced personality and to be a responsible citizen in society. It is said that it is the marriage institution which keeps going the social norms, rules, customs and laws to control human behavior in society.

Increasing rates of matrimonial frauds have disturbed the foundation stone of Institution of Marriage during present days. It is therefore necessary to bring awareness in the society at the time of marriage settlements to avoid any matrimonial frauds being committed against them and to enjoy the peaceful matrimonial life.

PART - I : CHANGE IN THE MARRIAGE INSTITUTION

This institution has always been in the process of change from the very beginning. Various types of new factors develop with the process of time and they make the social institutions structurally and functionally change. Marriage is not an exception to this rule. The following points can be quoted :-

1) Traditional form of marriage is rapidly changing into modern forms,

2) The fashion of inter-caste, and interreligious marriages in modern times is increasing. 3) Late marriages in place of child marriage. 4) Recognition of widow remarriages. 5) Social acceptance of the marriage of divorced women. 6) Provision of divorce after marriage.

Factors responsible for change

- 1) Development of new social situations.
- 2) Change in the value system in society.
- 3) Social legislation and provision for punishment.
- 4) Rational and materialistic attitudes among men and women both.
- 5) Increasing influence of modernization of westernization.
- 6) Spread of education.
- 7) industrialization and urbanization.
- 8) Social and political awareness among women.
- 9) Increasing participation of women in the employment.
- 10) Freedom movements among women and assertion of their rights.
- 11) Equal opportunities and equality before law.
- 12) Marriage is not obligatory for women today rather many of them prefer to live without marriage.

PART- II MATRIMONIAL FRAUDS

The second factor which vitiates consent to marriage is fraud.

Fraud is not defined under section 12 of the Hindu Marriage Act, 1955, nor it is defined under the General Clauses Act, 1897. It is defined under section 17 of the Indian Contract Act, 1872. Under the original provision, there was nothing to explain, qualify or limit the meaning of fraud. Under s.12 (1) (c) of the Hindu Marriage Act 1955 as it stands amended by the Marriage Laws (Amendment) Act 1976 the marriage can be avoided on the ground that consent of the petitioner or the consent of petitioner's guardian when such consent is necessary, for the marriage was (1) obtained by force or fraud, or (2) obtained by fraud as to the nature of ceremony, or (3) obtained by fraud as to the material facts or circumstances concerning the respondent.

Under the old s,12(1)(b) it could have been avoided only when such consent was obtained by fraud. It was decided in a plethora of decisions that fraud used in s,12(1)(c) of the Hindu Marriage Act does not speak of fraud in any general way, nor does it mean every misrepresentation or concealment which may be fraudulent. If the consent was real consent to the solemnization of marriage it could not be so avoided. A large body of case laws stands obsolete by the amendment.

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PART - III : FRAUD

Fraud has been practiced or not can be determined by the application of the doctrine of caveat emptor. It is not the duty of the parties intending to marry that they should themselves come

forward to speak of their virtues and vices. If a party, is interested in a particular quality of the other party e.g. his or her education, social status, property, health and premarital sexual life, he or she should make specific enquiries. On enquiry if wrong information is given or some abuse of confidential position or some deliberate concealment of material facts is made. It is to be reckoned as fraud. If nothing is concealed on enquiry, but he himself fails to verify all the facts due to his own carelessness or lethargy or difficulties, it is not fraud. In *N.G.Dastance v. S. Dastane*, the bridegroom and his parents had been told that due to a stroke of heat the mental condition of the bride was adversely affected and she was treated in a mental hospital, and that they could themselves enquire about it from there. The bridegroom failed to make complete enquiries about the case. Held, no fraud was practiced against him in the circumstances.

Concealment about the mental disorder which the respondent spouse has been suffering from before the marriage is also fraud. Thus concealment of wife's suffering from incurable schizophrenia is a ground of annulment of marriage on the ground of fraud. In a case the wife of the arranged and negotiated marriage was a patient of schizophrenia from before the marriage. During the negotiation the fact had been suppressed to the groom, This amounted to fraud.

Concealment of pre-marital status namely that one is a divorcee is a fraud. It may not be a vital factor when both the parties are divorcees or there is a history of both of them being previously married. But when one is already married and the marriage was terminated and the other spouse was unmarried, the concealment of matrimonial status is a fraud.

Pregnancy at a time of marriage, idiocy of the person suffering from a congenital defect depriving him or her of the ordinary intellectual power, a person suffering from mental disorder or suffering from schizophrenia, AIDS, HIV, IMPOTENCY, EPILEPSY, LEPROSY, concealment of age, qualifications, employment, property etc. are the common material facts amounts to matrimonial frauds which result into marriages being void from inception hence proper medications, family support, therapy and rehabilitation is highly necessary in such diseases.

PART IV: DIVORCE THEORIES

There are several ways through which a marriage can be dissolved, **Fault theory** was the first step in this direction. Fault divorce forms the core of matrimonial litigation.,

The basic ingredients of a fault ground divorce are.

- i) There must exist a guilty party or a party who is responsible for having committed one of the specified matrimonial offences.,
- ii) There must also exist an innocent party who has suffered due to the misconduct of the guilty party.
- iii) The innocent party should have no role in the cause of the misconduct i.e. there must be no collusion.

Mental illness is a ground for annulment for marriage as well as for divorce. For annulment, unsoundness of mind vitiates consent for a valid marriage and the other spouse can file for annulment on this ground.

Venereal diseases and sexually transmitted diseases like HIV / AIDs, syphilis, and gonorrhoea are also grounds for divorce.

The '**No Fault Theory**' of divorce is based on the fact that marriages very often fail not because of the fault or guilt of one of the spouses but because the spouses are not compatible in their temperament. Despite their best efforts, they are unable to live together as husband and wife. But the fault theory requires that one of them (and only one of them) should be guilty of some matrimonial offence in order to dissolve the marriage. Before the introduction of the theory of 'no fault divorce,' the only avenue open to such a couple was to fabricate a fault ground where one spouse accuses the other of a matrimonial fault and the other does not contests it.

To remedy the problem faced by such couples, the notion of a 'consent divorce' came to be included in matrimonial laws. The purpose was to enable couples to adopt honest rather than fraudulent or collusive means to achieve legitimate ends.

The **Break Down Theory** is based on the fact that irrespective of the fault of either or both parties, a marriage can be terminated if it is shown that nothing survives in the relationship.

Non-resumption of cohabitation for a certain period after a decree for judicial separation or non-compliance of a decree of restitution of conjugal rights for a certain period entitles either party to seek divorce.

PART V : MATRIMONIAL SURVEY

1) Including the cases of matrimonial frauds and family disputes, the present position of pending cases as disclosed by Hon'ble Chief Justice of India, is as under :

Pending cases : All over India : 3 crores
Pending cases in Supreme Court : 53680 lacs
Pending cases in High Court : 30 lacs
Pending cases in Trial Courts : 2. crores 63 lacs :

The figures reflects that there should be public awareness in minimizing such cases at the time of settlement of marriage or within short period after the marriage if the concerned parties finds that he is being deceived or a fraud has been committed against his life.

2) In Family Court, Pune, the rates of divorce petitions from 2004 to 2008 reflect the following picture :

Year	Divorce Petition by One Party	Mutual Petition by Both parties	Withdrawal of Petitions after counselling
2004	896	664	116
2005	1029	729	164

2006	1069	797	170
2007	1197	822	175
2008 (From Jan. to May end)	513	274	61

Thus the pre and post marriage counselling is found useful under such circumstances to avoid the marriage being annulled or parties file petition for divorce.

3) The women security cell is established in Pune by Police Commissioner's Office in 2008 and up to 10th March 2011 nearly 1312 matrimonial complaints were received. Against 65 cases offences were filed and in 516 cases the Police Cell is successful in the settlement of such cases by compromise between the parties and the active role by the social worker, Advocates and by the Police.

PART VI ; MATRIMONIAL FRAUDS AND EVIDENCE

The concerned parties who realize that they are deceived or certain essential facts have been concealed by the opposite parties or by the middlemen then within a year should approach Hon'ble Court or certain social organizations to bring the facts to knowledge of the court and to find certain remedy.

Under O 6, r, 4, C.P.C. in case of fraud, undue influence and coercion the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in the evidence. General allegation are insufficient even to amount to an averment of fraud of which any court, ought to take notice, however strong the language in which they are couched may be. This practice must be insisted on even if no objection is taken by the party on this score. If there is a general allegation of fraud, the party alleging it cannot lead evidence in excess of the plea. When pleading never is interpreted as containing allegation of fraud in trial court, and no opportunity of tendering evidence in support or in denial of fraud has been made available the plea of fraud cannot be taken for the first time in appeal. If a particular fraud is pleaded and another fraud is sought to be proved at the time of the trial through the evidence, the entire story of fraud is liable to be rejected.

Court while taking into consideration direct evidence can also consider the probabilities of the case. But fraud must be proved beyond reasonable doubt in matrimonial cases.

DISCUSSION & CONCLUSION

Misrepresentation as to the legitimacy and salary and property, misrepresentation about one's academic qualifications and employment, concealment of epilepsy, or schizophrenia, misguiding by cunning astrological prediction coupled with the concealment of his existing marriage and five grown up children are cases of fraud.

Where fraud is alleged, every content of fraud and how it was practiced on the plaintiff has to be proved. He has also to prove that he was influenced by the fraud. The evidence should not appear unnatural and untrustworthy.

The court found that the appellant was suffering from mental disorder (schizophrenia) since before her marriage; that this fact was not disclosed to the respondent, that still he made efforts for her treatment, which proved futile; that according to the medical advice the disease is incurable and she might become a danger to the husband and also to the child. The court therefore granted divorce. Similarly in *Sona v. Karambir*, a board of doctors gave the opinion that the wife suffered from moderate range of mental retardation, that her mental unsoundness was incurable; she could not discharge her marital obligations she gave totally incorrect and irrational answers to the questions posed to her. It was held that her case fell under section 13(1)(iii) Hindu Marriage Act, 1955..

A marriage, as said before, is a voluntary union of one man with one woman to the exclusion of all others. In this regard section 5 lays down certain conditions for a valid marriage.

Section 11 clearly lays down that any marriage solemnized after the commencement of this Act shall be null and void and may be declared so by a court, on presentation of a petition by either party against the other. If any one of the three conditions specified in clause (i)(iv) and (v) is violated the court can pass a decree of nullity of marriage declaring it to be void. Section 11 applies to void marriages only contracted after the commencement of the Act whereas Section 12 applies to marriages contracted before or after the commencement of the Act. In brief Section 11 is prospective, whereas section 12 is retrospective.

Remedy available under section 12 is an optional remedy i.e. the party concerned has to seek the aid of court for annulment decree, in case of section 11 of the Act itself declares a marriage to be null and void without any action on the part of any spouse. Of course, nobody can stop a spouse for getting a declaration of nullity for the purpose of precaution and for record.

Well established social organizations, alternative dispute resolution machinery, pre and post marriage counselling, police counselling cells, Para legal organizations, clinical psychologists, psychiatrics and the family consolors in the respective courts have to play and important role in preventing the matrimonial frauds and protect the Institution of Marriage. In questionnaire / schedule it is found that the marriage institution is changing very fast and certain factors in the unconscious mind at a time of mate selection are necessary viz. parental image, commentary needs, homogamy of boys and girls are necessary to be seen at the time of settlement of marriages.

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